



**CITY OF BURLINGTON
BOARD OF HEALTH**

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BOARD OF HEALTH

Ian C. Galbraith, Chair • Fernand C. Crete • Mary D. Hart • Alan R. Sousie • James Vos

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Linda Ayer

INTERN

Denis Pobric

HEALTH OFFICER

William Ward

**MINUTES - REGULAR MEETING OF
BURLINGTON BOARD OF HEALTH
Contois Auditorium, City Hall
Tuesday, November 9, 2010 5:30 PM**

Attendance: Ian, Fern, Alan, Bill, Linda, Mary, Jay, Dennis

Public citizens: CCTV <http://www.cctv.org/node/99917>, David White P&Z, Phil Fardel, George, Will Bennington, Will Robb, Cassy Gardner, Anne Decon, JoAnn Nichols, Deb Loring, Kevin Harley, Andrew

The meeting was called to order by Chairman Galbraith at 5:30

| ITEM | DISCUSSION | ACTION |
|---|--|--|
| 1. Approval of Agenda | Change Public Forum to first item on Agenda: | Approved |
| 2. Approval of Minutes: October 12, 2010 | | Approved |
| 3. Public Forum – Raising Chickens in the City of Burlington – Will Bennington et al. | BOH statement: Any action is under prevue of code | Chair, I. Galbraith to call Elisa Nelson to relate what has transpired. |

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| | <p>enforcement (Zoning issue) Clarification of law: total # of animals.</p> <p>Citizen Cassy Gardner: How do we change the ordinance?</p> <p>D. White, P&Z: Need to go through the city council – changes need to be approved; then sent to the Zoning committee and the ordinance committee who will be making recommendations.</p> <p>A variance from current ordinance can be requested from the Zoning Commission.</p> <p>What is the penalty for violation?</p> <p>Code Director W. Ward: Zoning administrator receives information. Inspector makes declaration of the need to come into compliance. Penalty is \$100.00/day until complied.</p> <p>D. White: Planning and Zoning Department</p> <ol style="list-style-type: none"> 1) Animal Control issue – neighbor hood nuisance concern, zoning regulations define what “hoarding” is for keeping 4 or more animals. More than four domestic animals is defined as running a kennel. 2) The current Burlington Zoning Ordinance is a precise tool to “regulate” the types of urban agriculture. | <p>See attached: <i>Burlington Planning and Zoning: ZONING & AGRICULTURE IN BURLINGTON</i></p> |
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| | <p>3) Those who wish to have more than 4 chickens can ask for a variance; however the threshold under the state ordinance is high and variance would not be granted..</p> <p>Suggestion: Generate a conversation through City Council to provide some direction as to how to address this issue. Involve Planning Commission, Police Department, Code Enforcement, Zoning Department.</p> <p>City could change the ordinance or specific regulations could be changed.</p> <p>Refer to the article from Vt. League of Cities and Towns which addresses if and how towns can regulate livestock and examine how it works in Burlington . Link: http://resources.vlct.org/</p> <p>Citizen W. Bennington brought issue up to BOH in September and contacted City Councilor.</p> <ul style="list-style-type: none"> • What would an amendment to ordinance look like if citizens went to the City Council? • Extensive overhaul of zoning codes takes time. • Work with city to come up with an | <p>See attached: <i>Planning and Zoning laws in regard to urban agriculture in Seattle, WA.</i></p> |
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| | <p>agreeable plan.</p> <p>Deborah Loring: Current regulations are not adequate for sustaining a household eating natural food. Considerations in expanding the ordinance:</p> <ul style="list-style-type: none"> • Per hen: 4 square ft indoor/10 feet outdoor • Description of structural requirements for the coop (i.e. ventilation, protection from predators, protection from temperature extremes • Require that chickens have access to clean water and appropriate feed at all times • Description of cleanliness/sanitary conditions – fecal matter, odors • Require feed be stored securely in covered rodent proof container • Prohibit beak trimming <p>Citizens' comments: Do not want to make a choice between dogs and cats and domestic fowl.</p> <p>Burlington urban ag is popular in comparison to other cities.</p> <p>Benefits are food and entertainment. Enjoyment of access in Burlington to agricultural benefits in an urban environment.</p> <p>Back yard chickens v. factory farming – salmonella more prevalent in caged fowl</p> | <p>BOH to adopt a resolution to deliver to City Council to address the issue of raising chickens in Burlington.</p> <p>Collaborate with: Burlington Food Council Burlington Community Gardens Group, Partner w/ Burlington Perma Culture and the VT Law School .</p> |
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| | <p>Ordinance amendment could address # of fowl, space requirements, household needs.</p> <p>Address the Health Issues. The Dept. of Ag deals with issues on a case by case basis. Natural life span of chickens is 10 – 15 years.</p> <p>Here is an opportunity to support overall review of the city ordinances and policies related to urban agriculture.</p> <p>Platform is in place with Burlington Food Council (auspices of CEDO) which has policies to promote safe and affordable food. Burlington Food Council has regular meetings.</p> | |
| 4. Legacy Project Follow-up | No Show - | |
| 5. Chairman's Report – Protocol for School Environment Quality Inspections | | NEXT MEETING |
| 6. Members' Reports: P.O.P.E. | <p>J. Vos in touch w/ Sid Boswell and Taylor Lafleur to establish dates for next Pesticide Working Group Meetings. Plans is to offer Winter Seminars similar to Summer Seminars for all interested utilizing the Linthelac funds. First one will be set up before December graduation.</p> <p>Pesticide write up in 7 – Days by Andy Bromage was a fair representation</p> <p>M. Hart: Editorials about IDLING in Burlington and a gentleman using Earthworms to control run-off.</p> | |

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| <p>FLUORIDE RESOLUTION</p> | <p>A.Sousie – Fluoridation of water:</p> <p>New book by Paul Connett, PhD Professor of Chemistry St. Lawrence University Canton, NY 13617</p> <p>THE CASE AGAINST FLUORIDE: How Hazardous Waste Ended Up in Our Drinking Water and the Bad Science and Powerful Politics That Keep It There. Published 2010 by Chelsea Green Publishing.</p> <p>This book is directed at anti-fluoridation activists. Filled w/ an abundance of Facts and Scientific Information about fluoridated water.</p> <p>Hoping that DPW Commission will get the Public Safety Committee to read this book.</p> <p>State of Washington is supporting action to reduce contact w/ fluoride. Burlington Board of Health resolution submitted January 2009 is still sitting in City Council Committee</p> | <p>BOH to READ the book: THE CASE AGAINST FLUORIDE: How Hazardous Waste Ended Up in Our Drinking Water and the Bad Science and Powerful Politics That Keep It There. Publication 2010 by Chelsea Green Publishing.</p> <p>Burlington is not the only population in US that is concerned about exposure to fluoride. BOH would appreciate any advocacy.</p> |
| <p>7. Staff Reports</p> | <p>N/A</p> | |
| <p>8. Action Items/Next Board Meeting</p> | | <p>Decision about Board's Action on Chicken Issue Establish School Inspections Protocol Tuesday, December 14th 5:30 PM at Robert Miller Community Center, Gosse Ct.</p> |
| <p>9. Adjournment</p> | <p>6:35 PM</p> | |

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ATTACHMENTS

Zoning and Agriculture in Burlington

1. Agricultural Uses and Farm Structures:

- a. Pursuant to Appendix A – Use Table, Agricultural uses are permitted in the RCO-A, RCO-RG and E-AE districts, and are conditionally permitted in the RCO-C district. In all other districts agricultural uses are not permitted.
- b. Statutory Agricultural Exemption: Any applicant wishing to undertake an agricultural use and/or construct a farm structure under the statutory agricultural exemption shall obtain a determination from the VT Agency of Agriculture, Food and Markets (AAFM) that the use constitutes an accepted agricultural practice and/or a farm structure in compliance with the AAFM *Accepted Agricultural Practice Regulations* and is therefore exempt from local zoning under state law pursuant to 24 V.S.A. 4413 (d).
 - i. The applicant shall provide the City's Zoning Administrator with a copy of the AAFM determination **as** proper notification of their intent to undertake an agricultural use and/or construct a farm structure along with a site plan for the property documenting conformance with any and all requirements and setbacks established by the AAFM.
 - ii. Upon satisfactory submission of the above materials, the City's Zoning Administrator shall provide the applicant a "Determination of Non-Applicability" pursuant to Sec. 3.1.2 (e) of the BCDO.
- c. Any structure for the care and keeping of other domestic animals or livestock which is not an exempt farm structure shall be subject to all applicable dimensional standards such as lot coverage & setbacks.

2. Livestock and Domestic Animals:

- a. The BCDO allows up to 4 domestic animals (including pets, chickens, goats or other livestock) more than 3 months of age in any combination as a permitted accessory use.
- b. The keeping of 5 or more domestic animals more than 3 months of age constitute "boarding" which is conditionally permitted only in the RCO-A, NAC-RC, E-AE and E-LM districts pursuant to Appendix A –

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Use Table.

- c. Pursuant to the AAFM *Accepted Agricultural Practice Regulations*, the statutory agricultural exemption may be applicable in connection with the raising, feeding, and management of at least the following number of adult animals: four equines; five cattle or American bison; fifteen swine; fifteen goats; fifteen sheep; fifteen

fallow deer; fifteen red deer; fifty turkeys; fifty geese; one-hundred laying hens; two-hundred and fifty broilers, pheasant, Chukar partridge, or Coturnix quail; three camelids; four ratites (ostriches, rheas, and emus); thirty rabbits; one hundred ducks; or one-thousand pounds of cultured trout.

4. **Gardening:** Gardening for the purpose of growing food, fiber, fruit, flowers, herbs, and other ornamental or useful plants for the personal use and enjoyment of the property owner, leasee, or tenants is not considered agriculture and is a permitted accessory use.

CAN TOWNS REGULATE DOMESTIC ANIMALS?

Yes, but not through zoning. "A bylaw under this chapter shall not regulate accepted agricultural ... practices, including the construction of farm structures, as those practices are defined by the secretary of agriculture, food and markets ..." 24 V.S.A. § 4413(d). But agricultural practices are not only a land use issue. They're becoming more and more a quality of life issue as well. •

Whether it is due to a rise in sprawl, the demand for local products, or simply aspirations for a healthier and more sustainable lifestyle accomplished by growing and raising the foods we eat ourselves, the spatial separation between where we live and where we grow our food is diminishing. As people get closer to their produce and the domestic animals used to support them, so, too — by obvious association — do their neighbors. This trend can be particularly fractious and intrusive when it comes to the raising and management of domestic animals. Domestic animals are defined under Vermont law as "cattle, sheep, goats, equines, deer, American bison, swine, poultry, pheasant, Chukar partridge, Coturnix quail, psittacine birds, ferrets, camelids, ratites (ostriches, rheas, and emus), and water buffalo. The term shall include cultured trout propagated by commercial trout farms." 6 V.S.A. § 1151(2).

Zoning however, isn't the only regulatory tool municipalities have at their disposal to address the interactions between man and beast. Other possible mechanisms include regulating the noise and odor generated by these animals via enactment of a noise or animal control ordinance pursuant to a town's nuisance authority [24 V.S.A. § 2291(14)], and regulating the potential detrimental public health affects of these practices by enacting a public health ordinance pursuant to a town's authority to "compel the cleaning or repair of any premises which in the judgment of the legislative body is dangerous to the health or safety of the public." 24 V.S.A. § 2291(13).

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Of course, occasionally the best response to a problem is to do nothing at all. Government can't be all things to all people and sometimes a dispute between neighbors is simply that. Regardless of the presence of an ordinance, these individuals could always opt to assert their own rights by filing a private nuisance suit in superior court.

Garrett Baxter, Staff Attorney, VLCT Municipal Assistance Center VLCT News, January 2010

SUBMISSION TO: Burlington Board of Health
SUBMISSION BY: Deborah A. Loring
DATE: November 9, 2010

WHEN CONSIDERING EXPANDING THE HEN ORDINANCE, PLEASE CONSIDER

- Defining the amount of indoor and outdoor run space there is per hen (4 square feet indoor/10 square feet outdoor minimum being the most common recommendation)
 - Describing additional structural requirements for the coop – i.e. ventilation, protection from predators, protection from temperature extremes (Some breeds are quite cold sensitive)
 - Requirement that chickens have access to clean water and appropriate feed at all times
 - Describing cleanliness/sanitary conditions - fecal matter, odors
 - Requiring that food be stored securely in a covered container that is rodent proof.
 - Prohibiting Beak trimming
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SOUTH PORTLAND, ME ORDINANCE#-4-07/08

THE COUNCIL of the City of South Portland hereby ordains that Chapter 3 "Animals and Fowl" of the "Code of Ordinances of the City of South Portland, Maine" be and hereby is amended as follows:

ARTICLE I. IN GENERAL

Sec. 3-1A. Definitions.

Chicken Pen shall mean a wire enclosure connected to a henhouse for the purpose of allowing chickens to leave the henhouse while remaining in an enclosed, predator-safe environment.

Henhouse shall mean a structure for the sheltering of female chickens. An existing shed or garage can be used for this purpose if it meets the standards contained in Article II. Domesticated Chickens, including the required distance from property lines.

ARTICLE II. DOMESTICATED CHICKENS Sec. 3-51. Purpose.

The Purpose of this article is to provide standards for the keeping of domesticated chickens. It is intended to enable residents to keep a small number of female chickens on a non-commercial basis while limiting the potential adverse impacts on the surrounding neighborhood. The City recognizes that adverse neighborhood impacts may result from the keeping of domesticated chickens as a result of noise, odor, unsanitary animal living conditions, unsanitary waste storage and removal, the attraction of predators, rodents, insects, or parasites, and non-confined animals leaving the owner's property. This article is intended to create licensing standards and requirements that ensure that domesticated chickens do not adversely impact the neighborhood surrounding the property on which the chickens are kept.

Sec. 3-52. Permit Required.

An annual permit is required for the keeping of any domesticated chickens in the City of South Portland. Additionally, a building permit is required for the construction of a henhouse and chicken pen.

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(a) The annual permit to keep chickens is personal to the permittee and may not be assigned. In the event the permittee is absent from the property for longer than sixty (60) days, the permit shall automatically terminate and become void.

(b) The first permit year shall be September 25, 2007 through December 31, 2008. Thereafter the permit year shall be January 1 through December 31.

In the first permit year, no more than twenty (20) permits shall be issued. In each subsequent permit year, twenty (20) more permits may be issued in addition to new permits issued to previous permittees.

Sec. 3-53. Fees

The fee for an annual permit to keep chickens is twenty-five dollars (\$25.00). In addition, a twenty-five dollar (\$25.00) fee shall be required for the building permit for the construction of a henhouse or chicken pen.

Sec. 3-54. Number and Type of Chickens Allowed.

(a) The maximum number of chickens allowed is six (6) per lot regardless of how many dwelling units are on the lot. In the case of residential condominium complexes without individually owned back yards, the maximum number of chickens allowed is six (6) per complex.

(b) Only female chickens are allowed. There is no restriction on chicken species. Sec. 3-55. Non-Commercial Use

Only.

Chickens shall be kept as pets and for personal use only; no person shall sell eggs or engage in chicken breeding or fertilizer production for commercial purposes. The slaughtering of chickens is prohibited.

Sec. 3-56. Enclosures.

(a) Chickens must be kept in an enclosure or fenced area at all times. During daylight hours, chickens may be allowed outside of their chicken pens in a securely fenced yard if supervised. Chickens shall be secured within the henhouse during non-daylight hours.

(b) Enclosures must be clean, dry, and odor-free, kept in a neat and sanitary condition at all times, in a manner that

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will not disturb the use or enjoyment of neighboring lots due to noise, odor or other adverse impact.

- (c) The hen house and chicken pen must provide adequate ventilation and adequate sun and shade and must both be impermeable to rodents, wild birds, and predators, including dogs and cats.

Henhouses.

- (d) Chickens must be kept in an enclosure or fenced area at all times. During daylight hours, chickens may be allowed outside of their chicken pens in a securely fenced yard if supervised. Chickens shall be secured within the henhouse during non-daylight hours.

- (e) Enclosures must be clean, dry, and odor-free, kept in a neat and sanitary condition at all times, in a manner that will not disturb the use or enjoyment of neighboring lots due to noise, odor or other adverse impact.

- (f) The hen house and chicken pen must provide adequate ventilation and adequate sun and shade and must both be impermeable to rodents, wild birds, and predators, including dogs and cats.

- (g) Henhouses.

(1) A henhouse shall be provided and shall be designed to provide safe and healthy living conditions for the chickens while minimizing adverse impacts to other residents in the neighborhood.

- (a) The structures shall be enclosed on all sides and shall have a roof and doors. Access doors must be able to be shut and locked at night. Opening windows and vents must be covered with predator- and bird-proof wire of less than one (1) inch openings.

- (b) The materials used in making the structure shall be uniform for each element of the structure such that the walls are made of the same material, the roof has the same shingles or other covering, and any windows or openings are constructed using the same materials. The use of scrap, waste board, sheet metal, or similar materials is prohibited. The henhouse shall be well-maintained.

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(c) The structure shall be painted; the color shall be uniform around the structure and shall be in harmony with the surrounding area.

(2) Henhouses shall only be located in rear yards, as defined in Sec. 2755. For a corner lot or other property where no rear yard exists, a side yard may be used as long as the setbacks generally applicable in the zoning district are met. In no case may a henhouse be placed in the front yard.

(3) If a henhouse is proposed to be located less than twenty (20) feet from any side or rear property line, the Code Enforcement Officer shall notify abutting property owners by mail at least twenty (20) days before issuing a permit, except that the permit may be issued in fewer than 20 days if all abutters have responded before the expiration of that time. For henhouses proposed to be located within twenty (20) feet from the side or rear property line, the burden of proof is on the applicant to demonstrate that the proposal will meet the criteria of this article and will not adversely impact the use or enjoyment of abutting properties.

(e) Chicken Pens.

(1) An enclosed chicken pen must be provided consisting of sturdy wire fencing buried at least 12" in the ground. The pen must be covered with wire, aviary netting, or solid roofing. The use of chicken wire is not permitted.

Sec. 3-63. Approval of permit

The Code Enforcement Officer shall issue a permit if the applicant has demonstrated compliance with the criteria and standards in this article.

Sec. 3-64. Denial, suspension or revocation of permit

The Code Enforcement Officer shall deny a permit if the applicant has not demonstrated compliance with all provisions of this article.

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A permit to keep domesticated chickens may be suspended or revoked by the Code Enforcement Officer where there is a risk to public health or safety or for any violation of or failure to comply with any of the provisions of this article or with the provisions of any other applicable ordinance or law.

Any denial, revocation or suspension of a permit shall be in writing and shall include notification of the right to and procedure for appeal.

Sec. 3-65. Appeal.

A person appealing the issuance, denial, suspension or revocation of a permit by the Code Enforcement Officer may appeal to the Board of Appeals within thirty (30) days of the decision being appealed.

Sec. 3-66. Penalty.

In addition to any other enforcement action which the city may take, violation of any provision of this article shall be a civil violation and a fine not exceeding one-hundred dollars (\$100.00) may be imposed. Each day that a violation continues will be treated as a separate offense.

Sec. 3-67. Removal of Chickens

In addition to the penalty stated in Sec. 3-68, any violation of the provisions of this article or of the permit shall be grounds for an order from the Code Enforcement Officer to remove the chickens and the chicken-related structures.

The Health Inspector, Health Officer, or Animal Control Officer may also order the removal of the chickens upon a determination that the chickens pose a health risk.

If a chicken dies, it must be disposed of promptly in a sanitary manner.

Sec. 3-68. Annual Report to City Council

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